

OCT 15 2002

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE ENRON CORP. SECURITIES,
DERIVATIVE & "ERISA" LITIGATION

MDL DOCKET NO. 1446

MARK NEWBY, ET AL.,

Plaintiff,

v.

CONSOLIDATED LEAD NO. H-01-3624

ENRON CORP., ET AL.,

Defendants.

**THE F&A PLAINTIFFS' OBJECTION AND/OR REQUEST FOR
CLARIFICATION OF ORDER ESTABLISHING DOCUMENT DEPOSITORY**

COME NOW the Fleming & Associates Plaintiffs in five cases pending before the Court (*Odam, et al. v. Arthur Andersen, L.L.P.*, No. H-01-3914; *Ahlich, et al. v. Arthur Andersen, L.L.P., et al.*, No. 02-CV-03794; *Delgado, et al. v. Fastow, et al.*, No. 02-CV-03795; *Pearson, et al. v. Fastow, et al.*, No. 02-CV-0386; and *Rosen, et al. v. Fastow, et al.*, No. 02-CV-3787) ("the F&A Plaintiffs") and file this their objection and/or request for clarification regarding order establishing document depository.¹ In support, the F&A Plaintiffs would show the following:

¹ *Odam* was filed in this Court as a securities and state law action and is presently pending under *Newby*. *Ahlich, Delgado, Pearson* and *Rosen* were filed originally in state courts in Brazos and Harris County. They were all removed in early 2002. On September 9, 2002, following the issuance of *Newby v. Enron*, 302 F.3d 295 (5th Cir. 2002), the Court ordered each remanded to its respective state court for lack of subject matter jurisdiction under SLUSA. On October 4, 2002, each of the four actions was removed again, under alleged "related to" bankruptcy jurisdiction. Motions to consolidate the cases with *Newby* are pending.

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1. On October 7, 2002, this Court signed an Order requiring any party opposing the Plaintiffs' joint motion to enter order establishing document depository to file its objections within five days of receipt of the Order. Having received a copy of this Order on October 8, 2002, via facsimile transmission from the Court, the F&A Plaintiffs now file this response.

2. Under Section II.B. of the proposed order establishing the document depository, the designated parties have been defined as "all plaintiffs and defendants in the Enron-related pleadings as of the date of production of related documents." Further, Enron-related proceedings have been defined as the above-captioned *Newby* action and the *Tittle* action in Section II.A..

3. Per the Court's consolidation order of December 12, 2002, the F&A Plaintiffs named above are plaintiffs in the *Newby* matter and are thereby, by virtue of consolidation, considered designated parties.

4. However, as this Court is aware, Fleming & Associates represents other individuals who are parties to state court proceedings, specifically the plaintiffs in *Bullock, et al. v. Arthur Andersen, et al.*, now pending in the 21st District Court of Washington County, Texas, No. 32,776.

5. So as not to run afoul of this Court's Order, F&A Plaintiffs object and/or seek clarification as to whether Fleming & Associates, as counsel for the *Bullock* plaintiffs, would have access to the document depository on behalf of the *Bullock* plaintiffs.

6. As written, the Order would seem to preclude individuals such as those in the *Bullock* matter from obtaining access to the document depository and thereby utilizing the documents produced by Defendants. Although Section VII.B. of the proposed order does allow third-party access, the access is only granted if a designated party producing documents grants the third party requesting documents access.

7. The F&A Plaintiffs believe that a denial to a pending state case of access to the document depository will unnecessarily duplicate the effort and cost of discovery in related state litigation. Moreover, access to the document depository by state court plaintiffs will ensure uniformity and convenience for all parties involved in discovery.


WHEREFORE, the F&A Plaintiffs hereby object and/or seek clarification regarding this Court's potential entry of an order establishing document depository in the above referenced matter, and for any and all further relief to which they may be entitled.

Respectfully submitted,

FLEMING & ASSOCIATES, L.L.P.

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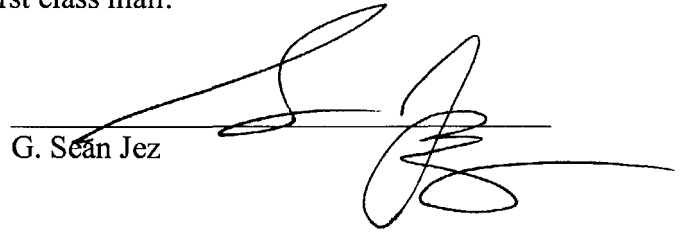

G. Sean Jez

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the above and foregoing has been provided to all parties as indicated on the attached Service List on this the 15th day of October, 2002, by e-mail pursuant to Court order, or by facsimile or first class mail:

G. Sean Jez

A handwritten signature in black ink, appearing to be 'G. Sean Jez', written over a horizontal line.

The Service List

May be Viewed in

the Office of the Clerk